

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 18TH JANUARY 2007 / 28TH PAUSHA 1928

WP(C).No. 14304 of 2006(C)

C.C.NO.5303/2005 OF THE III RD METROPOLITAN MAGISTRATE, GEORGE TOWN,
CHENNAI
.....

PETITIONER:

1. K.K.KUNJU MOHAMMAD,
S/O.KUNJU PILLAI, KAROLIL HOUSE,
MUDICKAL.P.O, MARAMPILLY VILLAGE,
PERUMBAVOOR, ERNAKULAM DISTRICT.
2. K.K.HASSAINAR, KURUPPASSERY HOUSE,
MUDICKAL POST, PERUMBAVOOR,
ERNAKULAM.

BY ADV. SRI.R.ANILKUMAR
SRI.P.BANI

RESPONDENTS:

1. K.L.JAIN & SONS,
FINANCIER 7, GENERAL MUTHAI STREET,
1ST FLOOR, SHOWCARPER, CHENNAI-600079.
2. K.G.DHARANI DHARAN,
JD FINANCE AGENT, S.N.JUNCTION,
TRIPUNITHURA, ERNAKULAM.
3. STATE OF KERALA,
REP. BY SECRETARY, HOME DEPARTMENT,
GOVERNMENT SECRETARIAT, TRIVANDRUM.
4. STATE OF TAMIL NADU,
REP. BY SECRETARY, HOME DEPARTMENT,
GOVERNMENT SECRETARIAT, CHENNAI,
TAMILNADU.

BY ADV. SRI.O.D.SIVADAS
PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 18/01/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).No. 14304 of 2006(C)

APPENDIX

PETITIONERS' EXHIBITS

EXT.P1:TRUE COPY OF THE SUMMON S IN CC.NO.5303/06 ISSUED TO THE PETITIONER
ON 7.6.06, 3RD METROPOLITAN MAGISTRATE COURT, CHENNAI.

EXT.P1(a):TRUE COPY OF THE SUMMONS IN CC.NO.5303/06 ISSUED TO THE PETITIONER ON
7.6.06 3RD METROPOLITAN MAGISTRATE COURT, CHENNAI.

EXT.P2:TRUE COPY OF THE PLAIN IN OS.NO.1704/05 IS PRODUCED.

EXT.P3:TRUE COPIES OF THE RECEIPTS FOR THE PAYMENT OF THE INSTALMENTS ON
25.03.04, 23.01.04, 15.5.04, 15.6.04, 11.9.04, 28.12.04, 4.3.05, 16.5.05, 25.6.05.

EXT.P4:TRUE COPY OF THE LAWYER'S NOTICE DEMANDING TO PAY AN AMOUNT
OF RS.1,32,000/- SENT ON 31.12.2005.

/TRUE COPY/

R.BASANT, J

W.P(C).No.14304 of 2006

Dated this the 18th day of January, 2007

JUDGMENT

The petitioners have come to this Court with this petition under Article 226 of the Constitution to quash criminal proceedings initiated against them before the IIIrd Metropolitan Magistrate's Court, George Town, Chennai under Sections 406 & 420 I.P.C. The petitioners have chosen to file this petition only under Article 226 of the Constitution and not under Article 227 of the Constitution or Section 482 Cr.P.C.

2. The short prayer is that the proceedings before the IIIrd Metropolitan Magistrate's Court, George Town, Chennai coming within the writ jurisdiction of the Tamil Nadu High Court may be quashed invoking the powers under Article 226 of the Constitution. The precise prayer is to quash the proceedings before a criminal court situated in a geographic territory over which this Court has no jurisdiction. There is no dispute that normally it is for the High Court of Tamil Nadu to consider the prayer for quashing of proceedings when it is made under Article 227 of the Constitution or Section 482 Cr.P.C. The question has been discussed in detail by the Supreme Court in **Musaraf Hossain Khan v. Bhagareetha**

Engineering Ltd. [2006(2) KLT 525]. The relevant observations and conclusions appear in para.28 of the said decision.

“Para.28: We have referred to the scope of jurisdiction under Arts.226 and 227 of the Constitution only to highlight that the High Courts should not ordinarily interfere with an order taking cognizance passed by a competent court of law except in a proper case. Furthermore only such High Court within whose jurisdiction the order of subordinate court has been passed, would have the jurisdiction to entertain an application under Art.227 of the Constitution of India unless it is established that the earlier cause of action arose within the jurisdiction thereof.”

3. The learned counsel for the petitioners submits that the said observations do not fetter the jurisdiction of this Court under Article 226 of the Constitution if it is shown that the earlier cause of action had arisen within the jurisdiction of this Court.

4. In this context it has become necessary to ascertain the nature of the complaint raised against the petitioners before the learned Magistrate at Chennai. The complaint has not been produced. It is not possible for this Court to ascertain the basis on which Ext.P1 series summons were issued to the petitioners by the Court at Chennai. Notwithstanding the fact that the complainant though served has not chosen to appear before this Court, I am satisfied that there is nothing on record to show that this Court has jurisdiction on the basis of the submission made at the Bar that the earlier cause of action had arisen within the jurisdiction of this Court.

5. It is for the petitioners to appear before the Court at Chennai and to raise the relevant contentions for discharge/acquittal or to seek orders from the High Court of Tamil Nadu under Section 482 Cr.P.C or Article 227 of the Constitution. I find absolutely no reason to invoke the powers under Article 226 of the Constitution to quash the proceedings pending before a Court at Chennai within the jurisdiction of the High Court of Tamil Nadu.

6. This Writ Petition is, in these circumstances, dismissed.

(R.BASANT, JUDGE)

rtr/-